

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

File No. 87256-001-SF

v

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
This 21st day of April 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On January 17, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on January 25, 2007.

As required by Section 2(2) of Act 495, the Commissioner conducts this external review as through the Petitioner were a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

Because the appeal involved medical issues, the Commissioner assigned the case to an independent review organization (IRO), which provided its recommendations to the Commissioner on February 11, 2008.

II

FACTUAL BACKGROUND

The Petitioner, who is thirteen years old, is enrolled for health coverage with Blue Cross and

Blue Shield of Michigan (BCBSM) through his father's employment with the XXXXX, a self-funded group. The provisions of his health care coverage are governed under the terms of the Community Blue Group Benefit Certificate (Certificate). He was admitted to XXXXX for mental health treatment on March 15, 2007 and was discharged on April 19, 2007. The total charge for Petitioner's stay at XXXXX was \$10,227.00. BCBSM denied coverage for this care.

The Petitioner appealed BCBSM's denial of his care at XXXXX. After a managerial-level conference on October 30, 2007, BCBSM did not change its decision and issued a final adverse determination dated December 12, 2007.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's inpatient mental health care provided at XXXXX from March 15 through April 19, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father says that Petitioner has been diagnosed with the "bi-polar trait" which has led to "intermittent explosive disorder". He has been treated in the past at XXXXX. He has also received multiple out-patient treatments through social workers, psychologists, and psychiatrists.

In February 2007, after one of his bi-polar attacks, the Petitioner threatened to kill his mother and was arrested and taken by the police to XXXXX, a court-supervised residential treatment facility. It became apparent that the Petitioner was not a delinquent but had a mental health problem. His case worker could not find a mental health placement so the Petitioner's parents assisted in the search. The Petitioner's parents found a bed available at XXXXX, a treatment facility in XXXXX, Michigan. Petitioner's father says that BCBSM was called and they indicated that the Petitioner was covered for inpatient care at 80% up to five million dollars. Petitioner was moved to XXXXX on March 15, 2007. On April 18, 2007 XXXXX informed the Petitioner's family that

BCBSM was not going to pay for his care. The Petitioner was discharged from the facility on April 19, 2007.

BCBSM has failed to pay for the Petitioner's care at XXXXX and his parents have been billed \$10,227.00 for the cost of this care. The Petitioner's parents argue that BCBSM had an obligation to inform them when they called prior to the start of Petitioner's treatment that it might not pay for his care at XXXXXX.

In addition, BCBSM denied coverage because it believed the Petitioner did not meet its "severity of illness" standards for inpatient mental health care. A January 11, 2007, police report indicated that the Petitioner threatened to kill his mother multiple times. The Petitioner's anger outbursts continued while at XXXXX. Also, medical reports from XXXXX state the Petitioner heard voices telling him to kill someone.

Based on BCBSM's assurances and the Petitioner's mental health condition, Petitioner's parents believe that his care at XXXXX was medically necessary and should be a covered benefit under his BCBSM certificate.

BCBSM's Argument

It is BCBSM's position that the Petitioner's inpatient admission at XXXXX was not a covered benefit under the Certificate. BCBSM obtained the Petitioner's medical records from the facility and had them reviewed twice by its medical consultants to determine if he met the criteria for inpatient mental health care as defined in the Certificate. The conclusion of both reviews was that the Petitioner did not meet the criteria for inpatient care.

The Certificate (page 7.13) indicates that hospital services are medically necessary when:

- The covered service is for the treatment, diagnosis or symptoms of an injury, condition or disease; and
- The service, treatment, or supply is appropriate for the symptoms and is consistent with the diagnosis. . . . Appropriate means that the type, level and length of care, treatment or supply and setting is needed to provide safe and adequate care and treatment. For inpatient hospital stays, acute care as an inpatient must be necessitated by the patient's condition because safe and adequate care cannot be received as an outpatient or in a less intensified

medical setting.

BCBSM's medical consultants reviewed the Petitioner's medical records and reported that, while Petitioner was at XXXXX,

the patient was under staff observation but there was little direct medical care or nursing supervision. He continued on medications that were previously prescribed with few changes. He was not psychotic and no suicidal or homicidal ideation was noted. He did not require sedation or restraint.

Based on this conclusion, BCBSM determined that the Petitioner's inpatient mental health care did not meet severity of illness or the intensity of service necessary for inpatient psychiatric care from March 15 to April 19, 2007. Therefore this care is not a covered benefit and BCBSM is not required to pay for it.

Commissioner's Review

The Commissioner reviewed the Certificate, the arguments and documents presented by the parties, and in the IRO report. BCBSM argued that the Petitioner's inpatient mental health care was not covered because his condition did not warrant inpatient care. This meant, under the language of the certificate, that inpatient care was not medically necessary.

The question of whether it was medically necessary for the Petitioner to be treated in an inpatient setting was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer in this matter is board certified in child and adolescent psychiatry, holds an academic appointment and has been in active practice for more than ten years.

The IRO reviewer found that Petitioner was recognized to be suffering from various mental impairments that were not being properly treated at XXXXX and his parents had him transferred to the residential treatment facility for psychiatric care. He was not homicidal, suicidal or psychotic when he was admitted to the residential treatment facility. The Petitioner's behavior was not a threat to his life or the lives of others at the time of admission.

The IRO reviewer indicated the records from the residential facility were limited. These

records include an admission note and an additional physician note dated March 27, 2007. There were no nursing notes, no family or group therapy session notes, and no treatment plan notes, except what was contained in the admission note. The reviewer stated that the records provided in the case file do not demonstrate that the Petitioner was clearly in need of intensive residential treatment during the period at issue in this appeal. Based on the available records, the Petitioner could have been treated in a less restrictive setting from March 15, 2007 until April 19, 2007.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that inpatient care for the Petitioner was not medically necessary from March 15, 2007 to April 19, 2007. Based on this conclusion, the Commissioner finds that the Petitioner's inpatient care at Harbor Oaks during this time is not a covered benefit under his Certificate.

The Petitioner believes that BCBSM misinformed his family about whether his care at XXXXX was a covered benefit. Under the PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms and conditions of the applicable insurance contract and state law. The Commissioner cannot resolve the kind of factual dispute described by the Petitioner because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on oral statements.

V ORDER

Respondent BCBSM's December 12, 2007, final adverse determination is upheld. BCBSM is not required to provide coverage for the Petitioner's inpatient care provided from March 15, 2007, through April 19, 2007 at XXXXX.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review

should be sent to the Commissioner of the Office of Financial and Insurance Regulations, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.